



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2021-0118]

Commercial Driver's License Standards: Application for Exemption; Werner Enterprises, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant Werner Enterprises, Inc. (Werner) an exemption from the regulation that requires a commercial learner's permit (CLP) holder operating a commercial motor vehicle (CMV) to be accompanied by a commercial driver's license (CDL) holder with the proper CDL class and endorsements, in the passenger seat. Werner requested an exemption to allow CLP holders who have passed the CDL skills test but have not yet obtained the CDL document from their State of domicile, to drive a CMV without having a CDL holder in the passenger seat. FMCSA has analyzed the exemption application and the public comments and has determined that the exemption, subject to the terms and conditions imposed, will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

DATES: This exemption is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and expires March 31, 2027.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; (202) 366-4225; MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Document

To view comments, go to www.regulations.gov, insert the docket number “FMCSA-2021-0118” in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, click “Browse Comments.”

If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the *Federal Register* (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the *Federal Register* (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify

the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulation Requirements

Under 49 CFR 383.25(a)(1) a CLP holder must always be accompanied by the holder of a valid CDL who has the proper CDL group and endorsement(s) necessary to operate the CMV. The CDL holder must always be physically present in the front seat of the vehicle next to the CLP holder while operating a CMV on public roads or highways and must have the CLP holder under observation and direct supervision or, in the case of a passenger vehicle, directly behind or in the first row behind the driver and must have the CLP holder under observation and direct supervision.

Applicant's Request

Werner requests the exemption to allow CLP holders who have successfully passed a CDL skills test and are thus eligible to receive a CDL, be allowed to drive without having a CDL holder seated beside them in the vehicle. Werner, however, indicates in their exemption request that the CDL holder will remain in the vehicle at all times while the CLP holder is driving – just not in the front seat. Werner contends that an exemption from this regulation will benefit Werner and the trucking industry in three ways: Improving efficiency of freight operations by maximizing driver employment during an historic driver shortage; creating immediate employment and compensation opportunities to qualified drivers; and improving the overall safety of the new driver experience. Werner believes it will face a significant burden in all three areas if this exemption is not granted.

Werner asserts that 49 CFR 383.25(a)(1) has created a significant burden on its operations. Prior to the implementation of the regulation, a new driver's State of domicile issued temporary CDLs to drivers who passed the CDL skills test. The temporary CDL

made it possible for Werner to place the new driver as “on duty” and route him or her to the State of domicile to obtain a CDL without entering a second driver into an “on duty” status, thus allowing productive freight movement for Werner and compensation for the new driver.

IV. Equivalent Level of Safety

Werner believes that applying the exemption only to drivers who have passed the CDL skills test, hold a CLP, and operate the CMV under supervision of a CDL holder who is somewhere in the vehicle, will ensure an equivalent level of safety. Werner believes that there is no difference between the CLP holders who have passed the CDL skills test and other truck drivers on the road. In fact, Werner notes that by allowing a CLP holder who has passed the CDL skills test out of State to drive en route to their State of domicile with a CDL holder present in the vehicle, safety will be improved over current regulations, which allow a new CDL holder to drive unsupervised immediately after receiving his or her CDL documentation. Werner will ensure this level of safety by maintaining proper, up-to-date records for all drivers in possession of a CLP who have passed the CDL skills test.

V. Public Comments

On August 18, 2021, FMCSA published notice of Werner’s application for exemption and requested public comment (86 FR 46310). The Agency received 25 comments. The commenters that opposed Werner’s request consisted of truck drivers, driver-trainers, other individuals, and the Owner-Operator Independent Drivers Association (OOIDA). These respondents do not believe that it is safe for a CLP holder to operate a CMV without the supervision of a CDL driver-trainer in the front seat of the truck.

For example, OOIDA wrote, “The regulations requiring an experienced driver in the front seat with a permit holder were implemented with safety in mind. As we move closer to the Entry-Level Driver Training rule taking effect next year, FMCSA should be

finding ways to further bolster training requirements, not weaken them. Granting this exemption would do just that. Because Werner has not demonstrated that this exemption would achieve a level of safety equivalent or greater than the safety level under the current regulations, a waiver should not be granted.”

Mr. Roger Issacs said, “I don’t think this should be approved. This would open the door for permit holders to run as a team driver, when some may not be able to pass a driver’s test, with no eyes on anything they could do wrong, when trainer is asleep in sleeper.”

The Agriculture Transportation Coalition (AgTC), American Trucking Associations (ATA), Idaho-Oregon Fruit and Vegetable Association, Truckload Carriers Association, truck drivers, and some individuals submitted comments supporting Werner’s application for exemption.

For example, AgTC said, “The AgTC supports Werner’s application for exemption to allow commercial learner's permit (CLP) holders who have successfully passed the commercial driver's license (CDL) skills test to be able to drive a commercial motor vehicle (CMV) without having a CDL holder seated beside them in the CMV. The exemption would boost operational productivity and get drivers employed faster. Not allowing Werner to immediately designate a new driver as “on duty” in order to drive to his or her home state to get CDL documentation creates inefficiency in the supply chain.”

The ATA stated, “Given the ongoing driver shortage, ATA is vitally interested in removing employment barriers to increase efficiency without hindering safety. As such, ATA appreciates the opportunity to comment on this important petition. Specifically, ATA believes that granting Werner’s exemption would achieve an equivalent or greater level of safety, mitigate the impact of state driver’s licensing agency (SDLA) processing delays, address the needs of a mobile workforce, and minimize costs and burdens for the trucking industry.”

VI. FMCSA Response to Comments and Decision

FMCSA has evaluated Werner's application for exemption and the public comments. The Agency is not aware of data or information that would suggest that Werner has lapses in its safety management controls, especially those involving its supervision of CMV drivers. Because the exemption is restricted to Werner's CLP holders who have documentation that they have passed the CDL skills test and could operate the CMV at any time upon receipt of the CDL document from the State of domicile, the Agency believes the exemption will achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption (49 CFR 381.305(a)). The exemption will enable these drivers to operate a CMV as a team driver without requiring that the accompanying CDL holder be on duty and in the front seat while the vehicle is moving. Because these drivers have already met all the requirements for a CDL but have yet to pick up the CDL document from their State of domicile, their safety performance is expected to be the same as any other newly credentialed CDL holder.

FMCSA has previously granted similar exemptions to C.R. England – initially in 2015, renewed in 2017 (82 FR 48889, Oct. 20, 2017) – and to CRST Expedited – initially in 2016, and subsequently renewed in 2018 (83 FR 53149, Oct. 19, 2018) and recently to Wilson Logistics (86 FR 11050, Feb. 23, 2021).

A copy of Werner's application for exemption is available for review in the docket for this notice.

VII. Terms and Conditions of the Exemption

Extent of the Exemption

The exemption from 49 CFR 383.25(a)(1) will allow Werner's drivers who hold a CLP and have successfully passed a CDL skills test, to drive a CMV without a CDL holder being present in the front seat of the vehicle. The CDL

holder must remain in the vehicle, but not in the front seat, at all times while the CLP holder is driving. The exemption is contingent upon Werner maintaining USDOT registration, minimum levels of public liability insurance, and not being subject to any “imminent hazard” or other out-of-service (OOS) order issued by FMCSA. Each driver covered by the exemption must maintain a valid driver’s license and CLP with the required endorsements, have in his or her possession documentation that he or she has passed the CDL skills test, not be subject to any OOS order or suspension of driving privileges, and meet all physical qualifications required by 49 CFR part 391.

Preemption

In accordance with 49 U.S.C.31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

Notification to FMCSA

Under the exemption, the Werner must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5T), involving any of the CMVs operating under the terms of this exemption. The notification must include the following information:

- a. Exemption Identifier and docket number, i.e., Werner, FMCSA-2021-0118.
- b. Name of operating carrier and USDOT number.
- c. Date of the accident.
- d. City or town, and State, in which the accident occurred, or closest to the accident scene.
- e. Driver’s name and license number.

- f. Co-driver's name (if any) and license number.
- g. Vehicle number and state license number.
- h. Number of individuals suffering physical injury.
- i. Number of fatalities.
- j. The police-reported cause of the accident, if provided by the enforcement agency.
- k. Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations; and
- l. The total on-duty time accumulated during the 7 consecutive days prior to the date of the accident, and the total on-duty time and driving time in the work shift prior to the accident.

VIII. Termination

FMCSA does not believe the motor carriers and drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions.

Robin Hutcheson,

Acting Administrator.